

# CRAVATH, SWAINE & MOORE

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Date OCT 20 1980

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ICC Washington, D. C.  
**12325**

RECORDATION NO. 12325 Filed 1425

**OCT 20 1980 -2 15 PM**

INTERSTATE COMMERCE COMMISSION

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**12325** INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 12325 Filed 1425

**OCT 20 1980 -2 15 PM**

North American Car Corporation  
Lease Financing Dated as of August 1, 1980  
INTERSTATE COMMERCE COMMISSION  
Equipment Trust Certificates Due November 1, 1992

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of North American Car Corporation for filing and recordation counterparts of the following documents:

(1) Equipment Trust Agreement dated as of August 1, 1980, between Continental Illinois National Bank and Trust Company of Chicago, as Trustee, and AmeriGas, Inc.

(2) (a) Lease of Railroad Equipment dated as of August 1, 1980, between North American Car Corporation and AmeriGas, Inc.; and

(b) Assignment of Lease and Agreement dated as of August 1, 1980, between AmeriGas, Inc., and Continental Illinois National Bank and Trust Company of Chicago, as Trustee.

RECEIVED  
OCT 20 1980  
2 07 PM '80  
FEDERATION BR.

*Joseph B. Bortman*

The names and addresses of the parties to the  
aforementioned documents are as follows:

(1) Owner:

AmeriGas, Inc.,  
460 North Gulph Road,  
(P. O. Box 858),  
Valley Forge, Pennsylvania 19482.

(2) Trustee:

Continental Illinois National Bank  
and Trust Company of Chicago,  
30 North LaSalle Street,  
Chicago, Illinois 60693.

(3) Lessee:

North American Car Corporation,  
222 South Riverside Plaza,  
Chicago, Illinois 60606.

Please file and record the documents referred to  
in this letter and index them under the names of the Owner,  
the Trustee and the Lessee.

The equipment covered by the aforementioned documents consists of 205 100-ton, 4,750 cu.ft. capacity covered hopper cars, AAR Mechanical Designation LO, bearing Serial Numbers 483249-483453, both inclusive, and also bears the legend "Ownership Subject to an Equipment Trust or Security Agreement and/or Vested in a Trustee or Other Person or Entity as Set Forth in a Bailment Agreement or Lease Filed with the Interstate Commerce Commission".

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Equipment Trust Agreement and the Lease of Railroad Equipment and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is

requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

*Laurance V. Goodrich*

Laurance V. Goodrich  
As Agent for  
North American Car  
Corporation

Agatha L. Mergenovich, Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

**Interstate Commerce Commission**  
Washington, D.C. 20423

10/20/80

OFFICE OF THE SECRETARY

Laurance V. Goodrich  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/20/80 at 2:15pm, and assigned re-recording number(s). 12325, 12325-A & 12325-B

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

RECORDATION NO. 12325

Filed 1425

OCT 20 1980 - 2 15 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 1413-020]

[NAC Lease 1980-II]

LEASE OF RAILROAD EQUIPMENT

Dated as of August 1, 1980

Between

NORTH AMERICAN CAR CORPORATION,  
Lessee,

and

AMERIGAS, INC.,  
Owner.

The rights and interests of the Lessor under this Lease are subject to a security interest in favor of Continental Illinois Bank and Trust Company of Chicago, as Trustee for certain institutional investors. The original of this Lease is held by said Trustee.

## LEASE OF RAILROAD EQUIPMENT

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This Table of Contents has been included in this document for convenience only and does not form a part of, or affect any construction or interpretation of this document.

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LEASE OF RAILROAD EQUIPMENT, dated as of August 1, 1980, between NORTH AMERICAN CAR CORPORATION, a Delaware corporation ("Lessee"), and AMERIGAS, INC., a Pennsylvania corporation ("Owner").

The Lessee, the Owner and Aetna Life Insurance Company and The Aetna Casualty and Surety Company (together with their respective successors and assigns called "Purchasers") are entering into a Participation Agreement ("Participation Agreement") dated as of the date hereof.

The Owner is entering into an Equipment Trust Agreement ("Security Document") with CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Trustee"), pursuant to which equipment trust certificates ("Trust Certificates") will be issued and sold to finance a portion of the purchase price of units of railroad equipment described in Schedule A hereto ("Equipment") to be built by the manufacturer thereof ("Builder"), and the Owner will be obligated to make payments equal to the principal of and interest on the Trust Certificates out of the rentals received hereunder and a security interest in the Equipment will be conveyed to the Trustee until the Owner fulfills all its obligations under the Security Document.

The Lessee desires to lease from the Owner all the units of the Equipment as are delivered and accepted under the Security Document at the rentals and for the term and upon the conditions hereinafter provided (each such unit being hereinafter called a "Unit").

The Owner will assign this Lease to the Trustee pursuant to an Assignment of Lease and Agreement ("Lease Assignment"), substantially in the form attached to the Security Document as Annex II, and the Lessee will consent to the Lease Assignment pursuant to a Consent and Agreement ("Consent") substantially in the form attached to the Lease Assignment.

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Owner hereby leases the Units to the Lessee upon the following terms



and conditions:

§ 1. Net Lease. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner under this Lease or under the Security Document, including the Lessee's rights by subrogation thereunder against the Builder or the Trustee or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment (except for any excess payment made in error) from the Owner, the Trustee or any holder of the Trust Certificates for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. The Owner hereby appoints the Lessee its agent for inspection

and acceptance of the Units pursuant to the Security Document. Each delivery of a Unit to the Owner under the Security Document shall be deemed to be a delivery hereunder to the Lessee at the point or points designated by the Lessee at which such Unit is delivered to the Owner and the Trustee under the Security Document. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Owner and the Trustee under the Security Document and on behalf of itself hereunder, and execute and deliver to the Owner and the Trustee a certificate of acceptance ("Certificate of Acceptance") substantially in the form attached hereto in Schedule C, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee, the Owner and the Trustee, and shall be subject thereafter to all the terms and conditions of this Lease and the Security Document. The Lessee hereby represents and warrants to the Owner that no Unit shall be put into service earlier than the date of its delivery to and acceptance by the Lessee as agent for the Owner and the Trustee hereunder.

§ 3. Rentals. The Lessee agrees to pay to the Owner, as rental for each Unit subject to this Lease, one special rental on November 1, 1980, and 24 consecutive semiannual payments payable in arrears on May 1 and November 1 in each year commencing May 1, 1981, to and including November 1, 1992. The special rental payable on November 1, 1980, shall be in an amount equal to interest due on that date on the Trust Certificates and the 24 semiannual rental payments shall each be in an amount equal to \$2,922.00 per Unit.

In no event shall the aggregate of the rentals provided for above on any rental payment date be less than the periodic principal and/or interest payments due on each such date pursuant to Section 2.02 of the Security Document.

In addition to the foregoing rentals, the Lessee will pay to the Trustee the following additional rentals: (i) an amount equal to the obligations of the Owner to the Trustee under Paragraph 12 of the Participation Agreement, (ii) an amount equal to the interest required to be paid in connection with any prepayment of Trust Certificates described in the third paragraph of Section 3.01 of the Security Document and (iii) an amount equal to any

amount due under Section 4.03(A)(ii) of the Security Document, in each case on such date as such amount shall be due.

If any of the rental payment dates referred to above is not a Business Day (as defined in the Security Document), the rental payment otherwise payable on such date shall then be payable on the next succeeding Business Day.

For so long as the Security Document shall remain in effect, the Owner irrevocably instructs the Lessee to make all the payments due the Owner provided for in this Lease, other than amounts payable directly to the Owner pursuant to § 6 or § 9 hereof, to the Trustee, for the account of the Owner, in care of the Trustee, with instructions to the Trustee (a) first, to apply such payments to satisfy the obligations of the Owner under the Security Document due and payable on the date such payments are due and payable hereunder and (b) second, so long as no Event of Default (or event which, with notice or lapse of time or both, could constitute an Event of Default) under the Security Document shall have occurred and be continuing, to pay any balance promptly to the Owner in immediately available funds at such address as the Owner shall specify in writing.

The Lessee agrees to make each payment contemplated by this § 3 in immediately available funds at or prior to 10:00 a.m., Chicago time, at the Corporate Trust Office (as defined in the Security Document) on the date due, or if the Security Document shall no longer be in effect, at the office of the Owner.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on November 1, 1992. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease or the termination or rescission of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Trustee under the Security Document, and,

if an Event of Default should occur under the Security Document, the Trustee may terminate this Lease (or rescind its termination), all as provided therein; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Trustee is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided Hereunder.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the serial number set forth in Schedule A hereto, and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO AN EQUIPMENT TRUST OR SECURITY AGREEMENT AND/OR VESTED IN A TRUSTEE OR OTHER PERSON OR ENTITY AS SET FORTH IN A BAILMENT AGREEMENT OR LEASE FILED WITH THE INTERSTATE COMMERCE COMMISSION", with appropriate changes thereof as from time to time may be required by law in order to protect the Trustee's and the Owner's title to and interest in such Unit and the rights of Trustee under the Security Document. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Lessee will not change the serial number of any Unit unless (i) the Trustee shall have been informed in writing of the new number or numbers to be substituted therefor and the Lessee shall have prepared and executed an appropriate amendment hereto which, promptly after execution and delivery by the Owner, shall be duly filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited and (ii) the Lessee thereafter shall have furnished the Trustee and the Owner an Opinion of Counsel (as defined in the Security Document) to the effect that such amendment has been so filed and deposited, that such filing, recording and deposit will protect the Trustee's and the Owner's rights in such Units under the Lease and that no other filing, recording, deposit or giving of notice with or to any Federal, state or local government or agency thereof is necessary to protect such rights of the Trustee and the Owner.

The Units may be marked or lettered with the

name of the Lessee or in some other appropriate manner for convenience of identification of the leasehold interest of the Lessee therein, and may also be marked or lettered, in case of a sublease of any Units permitted by § 12 hereof, in such manner as may be appropriate for convenience of identification of the sublease interest therein; but the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§ 6. Taxes. Whether or not any of the transactions contemplated hereby is consummated, the Lessee agrees to pay, and to indemnify and hold the Owner, the Trustee, the holders of Trust Certificates and the estate held in trust by the Trustee under the Security Document harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner, the Trustee, the holders of Trust Certificates, the Lessee, the trust estate created by the Security Document or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any Unit or any part thereof; the purchase, ownership, delivery, leasing, subleasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom or value added thereto; this Lease, the Lease Assignment, the Consent, the Participation Agreement, the Security Document, the Trust Certificates or the issuance thereof under the Security Document, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Trustee under the Security Document (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is then currently allowed a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner, the holders of Trust Certificates or the Trustee (in its individual capacity) other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease or the Participation Agreement; (ii) any Taxes

imposed as a direct result of a voluntary transfer or other voluntary disposition by the Owner or any transfer or disposition by the Owner resulting from bankruptcy or other proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease without the consent of the Lessee, unless, in each case, such transfer or disposition is required or contemplated by this Lease or an Event of Default shall have occurred and be continuing; and (iii) any Taxes imposed on or measured by any trustee fees received by the Trustee; provided, however, that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the fourth paragraph of this § 6. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same in good faith.

In the event the Lessee, pursuant to the preceding paragraph, makes a payment to a person indemnified hereunder on account of Taxes of any foreign country or subdivision thereof imposed on or measured solely by net income or excess profits, and such person in one of its subsequent taxable years is allowed a credit for such Taxes against its United States Federal income taxes, such person shall pay to the Lessee a sum which, after reduction by the Federal tax savings which such person derives from making the payment, is equal to the amount of the credit. For purposes of the preceding sentence it shall be assumed that all other foreign taxes of the person indemnified hereunder which qualify for such credit are first utilized.

In the event that the Owner shall become obligated to make any payment to the Trustee or otherwise pursuant to any corresponding provision of the Security Document not covered by the foregoing provisions of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Owner to fulfill completely its obligations pursuant to said

provision.

The amount which the Lessee shall be required to pay with respect to any Taxes indemnified against pursuant to this § 6 shall be an amount sufficient to restore the indemnified party to the same position such indemnified party would have been in had such Taxes not been imposed. In the case of any Taxes, which are paid directly by an indemnified party and for which such indemnified party is to be reimbursed pursuant to this § 6, the Lessee shall make payment to such indemnified party entitled thereto promptly upon receipt of notice from such indemnified party setting forth the basis for such reimbursement.

If claim is made against any indemnified party for any Taxes indemnified against under this § 6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, such indemnified party shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of such indemnified party; provided, however, that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party, which consent may not be unreasonably withheld. If such indemnified party shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by the Lessee and the period of such payment, such indemnified party shall pay to the Lessee an amount equal to the sum of such refund or interest net of expenses plus any Tax savings realized as the result of any payment made pursuant to this sentence when, as, if and to the extent such Tax savings are realized; provided, however, that no Event of Default and no event which, with

notice or lapse of time or both, would constitute an Event of Default shall have occurred and be continuing.

In case any report or return is required to be made with respect to any Taxes, the Lessee shall either make such report or return in such manner as will show the interests of the Owner and the Trustee in the Units, or shall promptly notify the Owner and the Trustee of such requirement and shall make such report or return in such manner as shall be satisfactory to the Trustee and the Owner. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

All the obligations of the Lessee under this § 6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the Security Document or the termination of this Lease. All amounts payable by the Lessee pursuant to this § 6 shall be payable directly to the indemnified party entitled to indemnification, except to the extent paid to a governmental agency or taxing authority. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of the payment of any installments of principal or interest payable under the Trust Certificates.

The Lessee shall furnish promptly, upon request, such information and data as is normally available to the Lessee and which the Trustee or the Owner reasonably may require to permit compliance with the requirements of any taxing authorities.

§ 7. Payment for Casualty Occurrences; Insurance. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except requisition for use by the United States Government for a period not in excess of the then remaining term of this Lease or if Option C under § 9 hereof shall be elected with respect thereto ("Casualty Occurrence") during the term of this Lease, or during the period prior to the date such Unit shall have been returned in the manner provided in § 11 or § 13 hereof, the Lessee shall promptly and fully notify the Owner and the Trustee with respect thereto and concurrently



therewith file with the Owner and the Trustee the Officer's Certificate required by Section 4.06 of the Security Document. On the rental payment date next succeeding the delivery of such notice and Officer's Certificate, the Lessee shall pay to the Owner an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus an amount equal to the Casualty Value (as hereinafter defined) of such Unit which suffered a Casualty Occurrence as of the date of such payment in accordance with Schedule B hereto. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner shall be entitled to recover possession of such Unit; and if such Casualty Occurrence results from the taking or requisitioning by condemnation or otherwise, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value, and any balance of such payments shall be the property of the Owner.

The Owner hereby appoints the Lessee its agent to dispose of any Unit, or any component thereof, suffering a Casualty Occurrence before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner and there is no Event of Default hereunder and no event then exists which after notice or lapse of time or both would become an Event of Default hereunder, (i) the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess (less expenses of sale incurred by the Lessee in the sale of such Unit) to the Owner (ii) but the Lessee shall be entitled to the proceeds of any insurance paid for by it in respect of such Unit and shall be entitled to any compensation due in respect of such Unit under the interchange rules of the Association of American Railroads.

The "Casualty Value" of each Unit as of the date on which payment therefor is made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule B hereto opposite such date; provided, however, that in no event shall the Casualty Value be less than the amount required to be paid by the Owner to the Trustee pursuant to Section 4.06 of the Security Document.

Whenever any Unit shall suffer a Casualty Occurrence after the end of the term of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, and whenever any Unit shall suffer a Casualty Occurrence while being stored as provided in § 14 hereof, the Lessee shall promptly and fully notify the Owner with respect thereto and pay to the Owner an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Owner shall be entitled to recover possession of such Unit.

In the event of the requisition for use by the United States Government of any Unit during the term of this Lease or any renewal thereof, unless such requisition shall constitute a Casualty Occurrence, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Owner pursuant to § 11 or § 13 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease; but the Lessee shall in all other respects comply with the provisions of said § 11 or § 13, as the case may be, with respect to such Unit. All payments received by the Owner or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Owner or the Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Owner.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit.

The Lessee maintains insurance on the Equipment when such Equipment is in its possession or control. Such insurance is of the types customarily carried by corporations of established reputation engaged in the same or a similar business and similarly situated, and insures

against risks of the kinds customarily insured against by such other corporations under similar circumstances. The Lessee will keep in effect its present or equivalent policies of insurance on the Equipment whereby the Lessee is insured against loss or damage with coverage in an amount at least equal to the fair value from time to time of the Equipment. When any of the Equipment is not in the Lessee's possession or control, in lieu of insurance, the Lessee's practice is to require sublessees of the Equipment to bear the risk of loss of the Equipment and the Lessee shall not be required to insure any Equipment the risk of loss of which is borne by the sublessee. The Lessee will pay the premiums on all policies of insurance required to be maintained by it pursuant to this provision and deliver to the Owner and the Trustee, at least once in every year, a certificate, signed by the President or by one of the Vice Presidents of the Lessee, stating that such insurance is in effect and naming the insurer or insurers. If the Lessee shall fail to maintain such insurance, the Owner or the Trustee may (but shall be under no obligation so to do) cause the Equipment to be insured in such amount as it shall deem advisable for the protection of the Owner and the holders of the Trust Certificates and may demand and recover from the Lessee the premiums on such insurance plus any financing expense incurred by it in order to pay such premiums.

§ 8. Reports. On or before April 1 in each year, commencing with the calendar year 1982, the Lessee will furnish to the Owner and the Trustee an Officer's Certificate (as defined in the Security Document) (a) setting forth as at the preceding December 31 (or as of the date of this Lease in the case of the first such Officer's Certificate) the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such Officer's Certificate) (specifying the dates of such Casualty Occurrences) or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner or the Trustee may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and the Security Document have been preserved or

replaced. The Owner shall have the right, at its own expense and risk, by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Owner may request during the continuance of this Lease.

§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification. THE OWNER DOES NOT MAKE, HAS NOT MADE OR SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND THE OWNER DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner and the Lessee, are to be borne by the Lessee; but, so long as no Event of Default has occurred and is continuing, the Owner hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Owner and the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner may have against the Builder or any supplier or railroad or maintenance or repair agency or shop; provided, however, that the Lessee shall be entitled to reimburse itself for its out-of-pocket expenses for asserting any claim from the proceeds of such claim. The Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Unit or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Unit or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Unit. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner (but not as between the Lessee and the Builder) that the Units described therein are in all the foregoing respects

satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Owner based on any of the foregoing matters.

The Owner will pay or discharge any and all claims, taxes, liens, charges or security interests claimed by any party from, through or under the Owner, not arising out of the transactions contemplated hereby (but including all taxes arising out of the receipt of rentals and other payments under this Lease or the Participation Agreement and any other proceeds from the Equipment), which, if unpaid, (i) might become a lien, charge or security interest on or with respect to any Unit of the Equipment or the Owner's interest in this Lease and the payments to be made hereunder or (ii) would result in the bankruptcy or reorganization of the Owner; but the Owner shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the rights or interests of the Lessee or the Trustee.

The Lessee agrees, for the benefit of the Owner and the Trustee, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units to the extent that such laws and rules affect the maintenance, operation or use of the Units (all such laws and rules to such extent being hereinafter called the "Applicable Laws"); provided, however, that the Lessee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Owner or the Trustee, adversely affect the property or rights of the Owner or the Trustee under this Lease or under the Security Document.

The Lessee, at its own cost and expense, will maintain and keep each Unit (including any accession thereto as hereinbelow provided) which is subject to this Lease in as good condition as when delivered to the Lessee hereunder, ordinary wear and tear excepted in accordance with the Interchange Rules of the American Association of Railroads and in the same condition as other similar equip-

ment owned or leased by the Lessee.

Alterations, replacements, modifications or additions of or to any Unit ("Modifications") shall be made in accordance with the provisions of this Section. The following terms for purposes of this Section shall have the respective meanings hereinafter specified.

(A) Required Modification shall mean a Modification (i) which is required by Applicable Laws and (ii) which is neither an Excess Required Modification nor a Minor Modification.

(B) Excess Required Modification shall mean a Modification (i) which is required by Applicable Laws, (ii) which is not a Minor Modification and (iii) the estimated cost of which when added to the cost of Required Modifications previously paid for or required to be paid for by the Owner, exceeds 32.1% of the aggregate "Purchase Price" (as defined in the Security Document) of the Equipment. Where a Modification, which is not a Minor Modification is required by Applicable Laws to be made to more than one Unit, the estimated cost of such Modifications shall be aggregated for purposes of determining whether such Modifications constitute Excess Required Modifications.

(C) Optional Removable Modification shall mean a Modification (i) which is not a Required Modification, an Excess Required Modification, or a Minor Modification, and (ii) which is readily removable without causing material damage to the Unit and does not adversely and materially affect the value of the Unit.

(D) Optional Fixed Modification shall mean a Modification (i) which is not a Required Modification, an Excess Required Modification, or a Minor Modification, and (ii) which is not readily removable without causing material damage to the Unit.

(E) Minor Modification shall mean a Modification, the estimated cost of which does not exceed 5% of the "Purchase Price" of the Unit to which the Modification is to be made.

The Lessee shall promptly and fully notify the

Owner of any Required Modification which must be made. Such notice shall include a description of the Modification, an estimate of the cost of the Modification, a description of the Applicable Laws which require such Modification to be made, and the date by which the Modification must be made. Such Modification shall be financed under Option A unless the Lessee in its notice to the Owner states that it elects Option B or Option D in which case the Option elected by the Lessee shall apply.

The Lessee shall promptly and fully notify the Owner of any Excess Required Modification which must be made. Such notice shall include a description of the Modification, an estimate of the cost of the Modification, a description of the Applicable Laws which require such Modification to be made, and the date by which the Modification must be made. Within 30 days after receipt of such notice, the Owner shall give notice to the Lessee stating whether or not the Owner is willing to utilize Option A. If the Owner states that it is willing to utilize Option A, that Option shall apply unless Lessee notifies the Owner, within 30 days after receipt of notice from the Owner, that the Lessee elects Option B, Option C or Option D, in which case the Option elected by the Lessee shall apply. If the Owner states that it is not willing to utilize Option A, Option B shall apply unless the Lessee, within 30 days of receipt of notice from the Owner, notifies the Owner that it elects Option C or Option D, in which case the Option elected by the Lessee shall apply.

The Lessee shall promptly and fully notify the Lessor of its desire to make an Optional Fixed Modification. Such notice shall include a description of the Modification, an estimate of the cost of the Modification, a statement of the business reasons for making such Modification, and the date by which such Modification is to be made. Within 30 days after receipt of such Notice, the Owner shall notify the Lessee whether the Owner consents to such Modification and if so whether the Owner is willing to utilize Option A. The Owner shall not unreasonably withhold consent. If the Owner states that it consents and is willing to utilize Option A, that Option shall apply unless the Lessee notifies the Owner, within 30 days after receipt of notice from the Owner, that the Lessee elects Option B or Option D, in which case the Option elected by the Lessee shall apply. If the Owner states that it consents but that it is not willing to utilize Option A, Option B shall apply unless the Lessee, within 30 days of receipt of notice from the Owner, notifies the Owner that it elects Option D, in

which case Option D shall apply. If the Owner does not consent, the Modification shall not be made and the Lessee shall not have the right to elect any of the Options; provided, however, that if the Owner does not consent and if the Optional Fixed Modification would not adversely and materially affect the value of the Unit to which it is to be made, the Lessee may make the Modification pursuant to Option B.

The Lessee from time to time may make Optional Removable Modifications. Option B shall apply to all Optional Removable Modifications. The Lessee shall make all Minor Modifications which are required by Applicable Laws and from time to time may make Minor Modifications which are not required by Applicable Laws; provided, however, that the Lessee shall not make any Minor Modifications not required by Applicable Laws which would adversely and materially affect the value of the Unit. Option B shall apply to all Minor Modifications.

The Options referred to above are as follows:

A. Option A. The Owner shall pay the cost of the Modification; each semiannual installment of rent to be paid by the Lessee over the remaining term of the Lease shall be increased by an amount which in the reasonable opinion of the Owner is sufficient to maintain the Owner's net after-tax yield over the term of the Lease at the same percentage level that would have been available to the Owner if it had not paid for the Modification; and the parties hereto shall enter into a supplement to Schedule B hereto to provide for appropriate additional Casualty Values for the Modification in amounts sufficient to maintain the Owners' net after-tax yield as aforesaid.

B. Option B. The Lessee shall pay, or cause its sublessee to pay, the cost of the Modification.

C. Option C. On the date on which the Lessee gives notice that it elects Option C a Casualty Occurrence shall be deemed to have been suffered by the Unit or Units to which the proposed Modification relates and the provisions of § 7 of this Lease shall apply.

D. Option D. The Lessee shall purchase the Unit or Units to which the proposed Modification relates at the higher of their fair market value determined as of the date on which the Lessee gives notice that it elects Option D and their Casualty Value as of the closing date of the purchase. The closing of the purchase of the Unit or Units shall occur on the rental



payment date next succeeding the delivery of notice to the Owner that the Lessee elects Option D. The Lessee shall pay the purchase price on the closing date of the purchase by: (i) taking the Unit or Units subject to the security interest of the Trustee to the extent of the unpaid principal amount of the Trust Certificates equal to the value of the Unit or Units being purchased as determined under Section 4.06 of the Security Documents; and (ii) paying to the Owner cash equal to the excess of the purchase price of the Unit or Units over the amount referred to in clause (i) above. If and to the extent the Lessee shall purchase any Units under this Option D, this Lease as to such Units shall terminate on the date of purchase; provided, however, that it shall be a condition to the closing of such purchase that there is in effect the written agreement between the Trustee and the Lessee referred to in the last sentence of Section 9.05 of the Security Document. Fair market value of a Unit shall be determined on the basis of, and shall mean, the amount which would be obtainable in an arm's-length transaction between an informed and willing buyer (other than a lessee currently in possession) under no compulsion to buy and an informed and willing seller under no compulsion to sell, and in such determination costs of transportation from the location of current use shall not be a deduction from such value. If the Owner and the Lessee cannot agree on such value they shall each appoint an independent appraiser and the two appraisers shall determine fair market value. If within 15 days after their appointment, the appraisers are unable to agree upon the amount in question they shall appoint a third appraiser by mutual consent disregarding the decision of the appraiser which is at greatest variance with the other two appraisals and averaging the respective decisions of the remaining two appraisers. Thereafter the amount as so determined shall be binding and conclusive on the Owner and the Lessee. The Owner and the Lessee shall pay the fees and expenses of the respective appraisers appointed by them.

Any and all parts installed on and additions and replacements made to any Unit (i) which constitute Modifications, other than (x) Optional Removable Modifications and (y) Minor Modifications which are not required by Applicable Laws and which are readily removable without causing material damage to the Unit, (ii) the cost of which is included in the Purchase Price of such Unit, or (iii) in the course of ordinary maintenance of the Units, shall constitute accessions to such Unit and full ownership thereof

free from any lien, charge, security interest or encumbrance shall immediately be vested in the Owner. Optional Removable Modifications and Minor Modifications which are not required by Applicable Laws and which are readily removable without causing material damage to the Unit shall be owned by the Lessee (or such other party as may have title thereto).

The Lessee shall pay, and shall protect, indemnify and hold the Owner, the holders of Trust Certificates and the Trustee, and their respective successors, assigns, agents and servants ("Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Owner) or of any agreement, law, rule, regulation, ordinance or restriction affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of the Trustee's holding a security interest under the Security Document or the Lease Assignment excluding, however, in each case with respect to an Indemnified Person any matter resulting from an act or omission of the Indemnified Person which would constitute the wilful misconduct or negligence

of such Indemnified Person (all of which matters indemnified against pursuant to the above being hereafter called the "Indemnified Matters"). All payments hereunder shall be made directly to the Indemnified Person. The Lessee shall be obligated under this § 9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same Indemnified Matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this § 9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this § 9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner will give each other written notice of any Indemnified Matter promptly upon obtaining knowledge thereof. Upon the payment in full of any indemnities as contained in this § 9 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of the Indemnified Matter. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments or related expenses previously made in respect of such matter.

The indemnities contained in this § 9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this § 9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The Lessee agrees at its expense to prepare and deliver to the Owner within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner) any and all reports (other than income tax returns) to be filed by the Owner with any Federal, state or other regulatory authority by reason of the ownership by the Owner or the Trustee of the Units or the leasing thereof to the Lessee. If the Lessee shall be unable to prepare any such report, the lessee will furnish such information in its possession as shall allow the Owner to prepare such report.

The indemnities arising under this § 9 shall not be deemed to operate as a guarantee of the residual value of the Units or as a guarantee of the payment of the principal of or interest on the Trust Certificates.

§ 10. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in § 3 or § 7 hereof or in Paragraph 9 of the Participation Agreement and such default shall continue for five days; or

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest therein, or of the right to possession of any of the Units; or

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Participation Agreement or in the

Consent and such default shall continue for 30 days after written notice from the Owner or the Trustee to the Lessee specifying the default and demanding that the same be remedied; or

(D) any representation of the Lessee made in the Participation Agreement (other than Paragraph 9 thereof) or pursuant thereto shall prove to have been false in any material respect when made; or

(E) any proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Consent under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee hereunder and under the Consent shall not have been and shall not continue to have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

then, in any such case, the Owner, at its option, may,

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall become liable as hereinafter provided for all liabilities arising prior to such termination and

by reason of the use of remedies hereunder; and thereupon the Owner may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be located, without judicial process if this can be done without breach of the peace, and take possession of all or any of the Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee or its successors or assigns to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Owner shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Owner, in its sole discretion, shall specify, in lieu of all rents not then due: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Owner reasonably calculates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 8% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or (y) an amount with respect to each Unit equal to the excess, if any, of the Casualty Value thereof as of the rental payment date on or next preceding the date of termination over the amount the Owner reasonably calculates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Owner shall have sold

any Unit, the Owner, in lieu of collecting any amounts payable to the Owner by the Lessee pursuant to clause (x) or clause (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Owner and the Lessee shall pay to the Owner on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Owner's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity. The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Owner to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner.

The Lessee also agrees to furnish the Owner and the Trustee, promptly upon any responsible officer becoming aware of any condition which constitutes an Event of Default under the Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and

status thereof. For the purposes of this paragraph, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate official of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

§ 11. Return of Units upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Owner. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, shall meet the standards of all Applicable Laws and shall have attached any accession thereto as provided in § 9 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 9, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) and at the usual speed place such Units upon such storage tracks selected by Lessee and reasonably acceptable to the Owner;

(b) permit the Owner to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Owner; and

(c) transport the same to any place on the lines of a railroad selected by Lessee and reasonably acceptable to the Owner, all as directed by the Owner.

The performance of the foregoing covenant is of the essence of this Lease and upon application to any court having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee, requiring the specific performance thereof. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the



Units in good order and repair and will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable except in the case of negligence or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Owner or any prospective purchaser or lessee, the rights of inspection granted under this sentence. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Owner and, if received by the Lessee, shall be promptly turned over to the Owner. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Owner for each day thereafter an amount equal to the amount, if any, by which % of the Purchase Price of such Unit exceeds the actual earnings received by the Owner with respect to such Unit for each such day.

For the purpose of this § 11, without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Owner as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. Assignment; Possession and Use. This Lease shall not be assignable by the Lessee or the Owner without the prior written consent of the other party, except the Owner, without the consent of the Lessee, may, subject to the provisions of Section 4.07 of the Security Document, assign all but not less than all of its interest hereunder to (i) any bank or trust company having a combined capital and surplus of at least \$25,000,000, (ii) any other financial institution or corporation having a combined capital and surplus of at least \$50,000,000, or (iii) any corporation owning at the time substantially all the capital stock of the Owner or any corporation or other entity (but not an individual) controlled by or under common control with the Owner or any corporation which shall purchase substantially all the assets of the Owner or shall be the successor of the Owner by merger or con-

solidation (any such institution, corporation or entity to which rights may be assigned or transferred being hereinafter referred to as the "Transferee"); provided, however, that no such Transferee or Affiliate (as defined in the Security Document) thereof may have been, immediately prior to the assignment, actively engaged in the management of railcars under operating leases. If the assignment occurs pursuant to clause (iii) above, the Owner shall remain secondarily liable for the obligations of the Transferee under this Lease if the Transferee shall not have a net worth of at least \$50,000,000 at the time of the assignment. In the event of any such assignment, the Transferee shall become a party to this Lease and will agree to be bound by all the terms of and will undertake all of the obligations of the Owner contained in this Lease and the Participation Agreement in such manner as is satisfactory to the Trustee and the Lessee. No such assignment shall violate any provision of law or regulation or create a relationship which would be in violation thereof. The Lessee shall not be on notice of or otherwise be bound by any such assignment unless and until it shall have received an executed counterpart of the instrument of such assignment, and no such assignment shall be effective until the Transferee shall have demonstrated its qualification under this Section to the reasonable satisfaction of the Lessee and shall have executed such instrument confirmatory of its assumption of the obligations of the Owner hereunder as may reasonably be satisfactory to the Lessee and its legal counsel. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment. All the rights of the Owner hereunder (including, but not limited to, the rights under §§ 6, 7 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner's assigns, including the Trustee.

Except as provided in § 7 hereof in the case of a Casualty Occurrence and in the next paragraph of this § 12, the Lessee will not transfer or sublet any of the Units or assign or transfer any of its rights hereunder, except that the Lessee may (subject to the provisions of § 14 hereof) sublet any of the Units to any Affiliate of the Lessee (as defined in the Security Document) whose rights are subordinated to all the rights of the Owner and the Trustee hereunder, under the Security Document and the Lease Assignment, which Affiliate is America or Canada or a political subdivision of either, other than the Provinces of Quebec, New Brunswick and Nova Scotia, or incorporated under the laws

of Mexico or a political subdivision thereof, and which Affiliate agrees in writing delivered to the Owner and the Trustee to take such Units subordinated as aforesaid and subject to the terms hereof, to comply with the covenants and agreements of the Lessee herein insofar as such covenants and agreements relate to the Units sublet to such Affiliate and not to assign or transfer its rights under any such sublease except to sublessees permitted hereunder or to the Lessee or to such Affiliate; provided, however, that no such sublease shall relieve the Lessee of its obligations hereunder, and the Lessee shall not, except as herein provided, part with the possession of, or suffer or allow to pass out of its possession or control any of the Units; provided further, however, that the foregoing is subject in all respects to § 14 hereof; and provided, finally, however, that in no event shall the Lessee permit any of the Units to be located at any time in any country other than the United States of America, Canada or Mexico.

So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Trustee is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, the Lessee and any such Affiliate shall be entitled to the possession and use of the Units in accordance with the terms hereof, and the Lessee and any such Affiliate may also in the future (a) furnish any Units to railroad companies for use upon the lines of railroad owned or operated by them or over which they have trackage rights and upon connecting and other carriers in the usual interchange of traffic, or to persons other than railroad companies for use in their business, or (b) sublet to others all or any of the Units, but only upon and subject to all the terms and conditions hereof, and subject and subordinate to all rights of the Owner and the Trustee hereunder and under the Security Document and the Lease Assignment.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled (subject and subordinate as aforesaid) to the possession of the Units included in such sublease and the use thereof, and, subject to the provisions of § 5 hereof, may provide for lettering or marking upon such Units for convenience of identification of the leasehold interest of such sublessee therein. Every such sublease shall expressly subject and subordinate the rights of the sublessee under such sublease to all the rights of the

Owner and the Trustee hereunder and under the Security Document and the Lease Assignment in respect of the Units covered by such sublease.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (other than any sublease permitted hereby or any encumbrance resulting from claims against the Owner or the Trustee not related to the transactions contemplated hereby) which may at any time be imposed on or with respect to any Unit including any accession thereto pursuant to § 9 hereof or the interest of the Owner, the Trustee or the Lessee therein.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder, under the Participation Agreement and under the Consent by an appropriate instrument in writing) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease, the Participation Agreement or the Consent.

§ 13. Return of Units upon Expiration of Term.  
As soon as practicable on or after the termination of the original term or any extended term of this Lease and in any event not later than 180 days after the termination of the original term or any extended term of this Lease, the Lessee will, at its own cost and expense, cause each such Unit to be transported to such point or points as shall be reasonably designated by the Lessee with the approval of the Owner, which shall not be unreasonably withheld, and will arrange for the storage of such Units at such point. The transporting, assembly and delivery into storage of such Units shall be at the expense of the Lessee. Until at least 90% of the Units (then available for interchange service) are first placed in storage, the expense of storage shall be borne by the Lessee; and if storage continues thereafter and storage facilities are available to the Lessee, the expense of storage shall be paid by the Owner to the Lessee at the prevailing rate.

The Lessee will be responsible for risk of loss and liability with respect to each Unit until such Unit is so delivered into storage and after such delivery into storage and until at least 90% of the Units (then available for interchange service) are first placed in storage. During any such storage period the Lessee will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable except in the case of negligence or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Owner or any prospective purchaser or lessee, the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner pursuant to this § 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, (ii) have attached or affixed thereto any accession title to which is in the Owner pursuant to § 9 hereof and have removed therefrom at Lessee's expense any addition, modification or improvement title to which is in the Lessee or any other person pursuant to § 9 and (iii) meet the applicable standards then in effect under all Applicable Laws.

If any Unit suffers a Casualty Occurrence during any free storage period provided for in this § 13, the Lessee shall pay to the Owner the Casualty Value of such Unit as determined in accordance with § 7 hereof. All gross amounts earned in respect of any Unit shall, from and after the termination of this Lease as to such Unit, belong to and be the property of the Owner. In the event that by the 180th day after the termination of this Lease with respect to any Units the Lessee has not, at the request of the Owner, caused at least 90% of such Units (then available for interchange service) to be transported to such point or points as provided in this § 13, the Lessee shall pay to the Owner an amount equal to 110% of the daily rental multiplied by the number of Units then

subject to this Lease for each day from such 180th day to the date on which at least 90% of the Units (then available for interchange service) have been so transported.

§ 14. Recording. Promptly after the execution and delivery of this Lease, the Security Document, the Lease Assignment and each supplement or amendment hereto or thereto, the Lessee shall (i) cause the same to be duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 except that such filing of a supplement or an amendment shall not be required if the filing thereof is not necessary for the protection of the rights of the Trustee hereunder and (ii) cause all filings which shall be necessary for the protection of the rights of the Owner and the Trustee hereunder and of the Trustee under the Lease Assignment to be made in accordance with any applicable national registration legislation of Canada (provided filings under such legislation will render the title and interests of the Trustee and the Owner superior to all other claims against such title and interests) or the applicable registration legislation of all mainland Provinces of Canada (other than Quebec, New Brunswick and Nova Scotia, subject to the proviso below) in which such documents are eligible for filings; and the Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by the law of any jurisdiction in which any Units shall be used and reasonably requested by the Trustee for the purpose of proper protection of the title and interests of the Trustee and the Owner in and to the Units and of fully carrying out and effectuating this Lease and the intent hereof; provided, however, that the Lessee shall not be required to take any such action in respect of any jurisdiction outside the United States of America if (1) the Lessee deems such action to be unduly burdensome, (2) after giving effect to the failure to take such action, the Lessee has taken all action required by law to protect the title and interests of the Trustee and the Owner to all Units other than Units having an aggregate Purchase Price of not more than 10% of the aggregate Purchase Price of all Units then subject hereto and (3) any Unit at any time located in such jurisdiction shall have been marked with the markings specified in § 5 hereof.

Promptly after the execution and delivery of this Lease, the Security Document, the Lease Assignment and each supplement or amendment hereto or thereto, the Lessee will

furnish to the Trustee and the Owner one or more Opinions of Counsel stating that, in the opinion of such counsel, the same has been properly recorded and filed so as effectively to protect the title and interests of the Trustee and the Owner in and to the Units and their rights thereunder and hereunder as provided in the next preceding paragraph and reciting the details of such action, it being understood that such an Opinion of Counsel shall not be required in the case of any amendment hereto to delete any Unit which shall have suffered a Casualty Occurrence; and the Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law, and when reasonably requested by the Trustee or the Owner for the purpose of proper protection of the title and interests of the Trustee and the Owner and effectuating this Lease and the intent hereof; all expense incident to such recording and filing to be paid by the Lessee.

§ 15. Owner's Right To Perform for the Lessee. If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Owner incurred in connection with such performance or compliance, together with interest on such amount at the rate of 13-7/8% per annum or such lesser amount as shall be legally enforceable, shall be payable by the Lessee upon demand. No such performance or compliance by the Owner shall be deemed a waiver of the rights and remedies of the Owner against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder.

§ 16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay an amount equal to interest at a rate of 13-7/8% per annum on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 17. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or deposited in the United States mails, first class

postage prepaid, addressed as follows:

if to the Owner, Box 858, Valley Forge, Pennsylvania 19482, Attention of President;

if to the Lessee, 222 South Riverside Plaza, Chicago, Illinois 60606, Attention of Vice President-Finance;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party. Any notice to the Lessee by the Trustee or the holders of the Trust Certificates regarding the Lessee's failure to perform any obligation hereunder shall also be furnished by the Lessee to the Trustee.

§ 18. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Owner and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto, except the Participation Agreement. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Owner and the Lessee and unless, in the case of any such variation, modification or waiver which could adversely affect the rights of the Trustee under the Security Document or under this Lease, the Trustee shall have consented in writing thereto.

§ 19. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Trustee shall be deemed to be the original counterpart and all other counterparts shall be deemed duplicates thereof. It shall not be necessary that any counterpart be signed by both the parties hereto so long as



each party hereto shall have executed and delivered one counterpart hereof to the other party. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 20. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

NORTH AMERICAN CAR CORPORATION,

by J. Harison  
Vice President

[CORPORATE SEAL]

Attest:

James M. Silberg  
Secretary

AMERIGAS, INC.,

by Jack L. Mesman  
VICE PRESIDENT

[SEAL]

Attest:

Al Grant  
SECRETARY

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this 14 day of October 1980, before me personally appeared J. Harrison, to me personally known, who, being by me duly sworn, says that he is a Vice President of NORTH AMERICAN CAR CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Doris M. Schmitt  
Notary Public

[Notarial Seal]

My Commission expires 5-6-82

STATE OF Pennsylvania , )  
 ) ss.:  
COUNTY OF Montgomery , )

On this 16<sup>th</sup> day of October 1980, before me personally appeared Jack L. Messman, to me personally known, who, being by me duly sworn, says that he is a Vice President of AMERIGAS, INC., that one of the seals affixed to the foregoing instrument is the seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

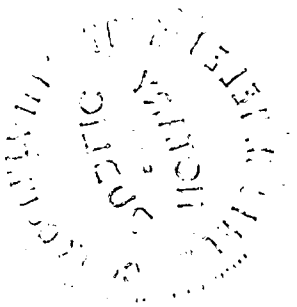
Cheryl Lynne Plunkett  
Notary Public  
CHERYL LYNN PLUNKETT, NOTARY PUBLIC  
UPPER MERION TWP., MONTGOMERY COUNTY  
MY COMMISSION EXPIRES APR 12, 1984  
Member, Pennsylvania Association of Notaries

[Notarial Seal]

My Commission expires

# SCHEDULE A

<u>Trust Equipment Description</u>	<u>AAR Mechanical Designation</u>	<u>Units of Trust Equipment</u>	Serial <del>Pool</del> <u>Numbers (incl.)</u>
100-ton, 4,750 cu. ft. covered hopper cars	LO	205	483249- 483453



# SCHEDULE B

## Casualty Values

<u>Payment Date</u>	<u>Percentage</u>
11/1/80	
5/1/81	105.662903
11/1/81	106.218951
5/1/82	106.308681
11/1/82	106.114948
5/1/83	105.498129
11/1/83	104.612859
5/1/84	96.426480
11/1/84	94.870583
5/1/85	92.933834
11/1/85	90.733506
5/1/86	81.283268
11/1/86	78.470801
5/1/87	75.339752
11/1/87	71.955614
5/1/88	61.427067
11/1/88	57.565601
5/1/89	53.490818
11/1/89	49.118990
5/1/90	44.682202
11/1/90	39.936532
5/1/91	35.093386
11/1/91	30.066536
5/1/92	25.123673
11/1/92 and thereafter	20.000000

SCHEDULE C

Certificate of Acceptance

I, \_\_\_\_\_, a duly authorized representative of AMERIGAS, INC. ("Owner"), of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Trustee") and of NORTH AMERICAN CAR CORPORATION ("Lessee"), do hereby certify that I have inspected, received, approved and accepted, on behalf of the Owner, the Trustee and the Lessee, under the Equipment Trust Agreement dated as of August 1, 1980, between the Owner and the Trustee and under the Lease of Railroad Equipment dated as of August 1, 1980, between the Owner and the Lessee the following units of equipment ("Equipment"):

DESCRIPTION OF EQUIPMENT:	100-ton, 4,750 cu. ft. covered hopper cars
BUILDER:	Thrall Car Manufacturing Company
DATE ACCEPTED:	_____, 1980
SERIAL NUMBERS:	483249 through 483453

I do further certify that the Equipment is in good order and condition and conforms to the above-listed description, and at the time of delivery to the Owner, the Lessee and the Trustee each unit of the Equipment was marked with its respective serial number and there was plainly, distinctly, permanently and conspicuously marked upon each side of each unit of the Equipment the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO AN EQUIPMENT TRUST OR  
SECURITY AGREEMENT AND/OR VESTED IN A TRUSTEE  
OR OTHER PERSON OR ENTITY AS SET FORTH IN A  
BAILMENT AGREEMENT OR LEASE FILED WITH THE  
INTERSTATE COMMERCE COMMISSION.

I do further certify, on behalf of the Lessee, that none of the units of Equipment was placed in service by the Lessee or any other person prior to its delivery and acceptance hereunder.

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder of the Equipment for warranties it has made with respect to the Equipment.

Authorized Representative of  
The Owner, the Trustee and  
the Lessee.